

SUPPORT FOR AMENDMENTS

Support for the amendments to claim 1 can be found, *inter alia*, at page 2, line 30, page 3, line 2 and original claim 15. Support for the amendment to claim 15 can be found, *inter alia*, at page 6, line 28. Support for new claims 25 and 26 can be found, *inter alia*, at page 7, lines 15-18. Neither the amendments to claims 1 and 15 nor the addition of new claims 25 and 26 is directed to new matter as amended claims 1 and 15 and new claims 25 and 26 are directed to subject matter within the scope of the pending claims. It is respectfully requested that these amendments and new claims should be entered. Claim 22 has been canceled. Accordingly, claims 1, 3-21 and 23-26 are currently pending.

REMARKS

The pending claims relate to **solid** compositions comprising an aqueous phase dispersed in an oily phase, a silicone emulsifier, and at least 3% wax, wherein the composition comprises at least 70% water, the aqueous phase represents at least 75% of the composition, and the oily phase/silicone emulsifier ratio by weight is equal to or greater than 5. Thus, the presently claimed invention is directed to water-in-oil compositions having a large amount of aqueous phase and a relatively small amount of silicone emulsifier.

As noted in the present specification, water-in-oil compositions are generally desirable for at least the reason that such compositions have an internal aqueous phase which allows hydrophillic active agents to be more effective. (Page 1, lines 20-23). However, such compositions typically are uncomfortable upon application due to the greasy or heavy feeling resulting from the external oil phase of these compositions remaining on skin. (Page 1, lines 24-26). While the preparation of water-in-oil emulsions having a high water content has been envisaged, (page 1, lines 28-29), the water content cannot be too high in such compositions

for stability reasons without being compensated for by adding several surfactants or gelling agents, ingredients which can be problematic upon application to skin. (Page 1, line 29 through page 2, line 3).

The presently claimed compositions address such problems associated with high water content water-in-oil emulsions. These compositions, despite their high water content, are stable. (Page 2, lines 27-28). Moreover, the claimed compositions give a strong impression of freshness upon application (that is, not greasy or heavy). (Page 2, lines 8-10). As such, the claimed compositions are novel and represent an advance in the art.

In view of this background, the sole rejection made in the outstanding Office Action will now be addressed.

REJECTION UNDER 35 U.S.C. §103

The Office Action rejected claims 1 and 3-24 under 35 U.S.C. §103 as obvious over U.S. patent 5,250,289 (“Boothroyd”) in view of U.S. patent 5,412,004 (“Tachibana”) and U.S. patent 5,811,487 (“Shulz”). In view of the following comments, Applicants respectfully request reconsideration and withdrawal of this rejection.

Boothroyd discloses water-in-oil emulsions containing significant amounts of titanium dioxide which reportedly have improved SPF characteristics. Boothroyd’s compositions are “creams” and “lotions,” (see, examples 1-11), not **solid** compositions as required by the present claims.

Moreover, Boothroyd neither teaches nor suggests water-in-oil compositions containing at least 70% water and having an aqueous phase of at least 75% as required by the claims. The Office Action admits as much, indicating that Boothroyd’s compositions contain at most 62-64% water.

While Boothroyd states that “any emulsifier known in the art for use in water-in-oil emulsions” can be used in his emulsions, (col. 2, lines 21-22), nowhere does Boothroyd teach, suggest or recognize the importance of including a silicone emulsifier in his emulsions. Boothroyd does not state that silicone emulsifiers must be present. In contrast, the pending claims require the presence of silicone emulsifier.

Boothroyd also fails to teach or suggest compositions having a relatively small amount of silicone emulsifier (that is, compositions having an oily phase/silicone emulsifier ratio greater than or equal to 5). For example, Boothroyd’s example 10 has an oily phase/silicone emulsifier ratio of only 2.5 (15:6).

Finally, Boothroyd neither teaches, suggests, nor recognizes the significance of having at least 3% wax present. Boothroyd merely states that waxes **can** be incorporated into his emulsions as part of the oil phase (col. 2, lines 10-11), but does not state that waxes **must** be present (or that they must be present in a specified amount). The present claims require the presence of at least 3% wax.

Clearly, Boothroyd fails to teach or suggest several of the required individual elements of the claimed invention. Nothing in Boothroyd suggests modifying any single element in the disclosed emulsions such that one of the claimed elements is used in its place, let alone suggesting modification of **all** of these elements to yield the claimed invention. Similarly, nothing in Boothroyd would lead one skilled in the art to expect that it would be possible to obtain a **solid** composition which is “fresh” upon application to skin by combining the amounts of water, silicone surfactant, and wax required by the claims.

Neither Tachibana nor Shulz compensates for Boothroyd’s deficiencies. Both of these references are directed to specific types of silicone polymers and, thus, do not address Boothroyd’s deficiencies discussed above.

In view of the above, Applicants respectfully submit that the rejection under 35 U.S.C. §103 should be withdrawn.

Applicants believe that the present application is in condition for allowance. Prompt and favorable consideration is earnestly solicited.


Respectfully submitted,

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1. (Twice amended) A solid composition comprising
an aqueous phase, and
an oily phase, which includes
a silicone emulsifier and
a wax, wherein
the aqueous phase is dispersed in the oily phase;
the aqueous phase is present in at least [70%] 75% by weight with respect to the total
weight of the composition;
the wax is present in at least 3% by weight with respect to the total weight of the
composition;
the solid composition exhibits a compressive strength of greater than or equal to 50
grams, at room temperature, after penetration by a cylindrical probe having a diameter of 0.8
cm into the composition over a thickness of 5 mm at a rate of 1 mm/s; [and]
the oily phase/silicone emulsifier ratio by weight is equal to or greater than 5; and
the composition comprises at least [65%] 70% water with respect to the total weight
of the composition.

15. (Amended) The composition according to Claim 1, wherein the oily
phase/silicone emulsifier ratio by weight is equal to or greater than [5] 8.

Claim 22 (canceled)

Claims 25-26 (new)